WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
March 2004

This calendar contains summaries of upcoming Supreme Court cases. These brief synopses do not cover all issues that each case presents. These cases originated in the following counties:

Brown
Dane
Eau Claire
Kenosha
Marinette
Milwaukee
Waukesha
Waupaca

TUESDAY, MARCH 9, 2004

9:45 a.m.	02-1515	Harold Sampson Children's Trust, et al. v. Linda Gale Sampson 1979 Trust, et al.
10:45 a.m.	03-0662	Cesare Bosco v. Labor & Industry Review Commission, et al.
1:30 p.m.	02-3014-CR	State v. Bart C. Gruetzmacher

WEDNESDAY, MARCH 10, 2004

9:45 a.m.	02-2793-CR	State v. Victor K. Johnson
10:45 a.m.	01-3051	Terry D. Van Lare, et al. v. Vogt, Inc
1:30 p.m.	02-1790	Steven H. Hoyme v. Janice S. Brakken

FRIDAY, MARCH 12, 2004

9:45 a.m.	02-1915	Tammy Kolupar v. Wilde Pontiac Cadillac, Inc., et al.
10:45 a.m.	01-1402	State v. William H. Thornton, Jr.
1:30 p.m.	00-3318	In re Commitment of Joseph Lombard: State v. Joseph A. Lombard

WEDNESDAY, MARCH 24, 2004

9:45 a.m.	02-2106	In the interest of Cesar G: State v. Cesar G.
10:45 a.m.	03-1817	Derek J. Harder, et al. v. Carol L. Pfitzinger, et al.
1:30 p.m.	02-3380	State ex rel. Michael J. Thorson v. David H. Schwarz

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-277-5133. Synopses are a service of the Director of State Courts Office/Amanda Todd, Court Information Officer 608-264-6256.

WISCONSIN SUPREME COURT
Tuesday, March 9, 2004
9:45 a.m.

02-1515 Harold Sampson Children's Trust, et al. v. Linda Gale Sampson 1979 Trust, et al.

This is a review of a split decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a ruling of the Milwaukee County Circuit Court, Judge Dominic S. Amato presiding.

In this case, the Wisconsin Supreme Court will decide whether a person's attorney may share private documents with the opposing side in a case without the client's permission. Specifically, the Court will focus on materials protected by the attorney-client privilege. All communications between a lawyer and his/her client are, under the law, automatically privileged, or confidential. This encourages openness and honesty in the attorney-client relationship.

Here is the background: This case arises from a family dispute over money. Family members for whom the Harold Sampson Children's Trust (HSC Trust) was established sued family members for whom the Linda Gale Sampson 1979 Trust was set up (LGS Trust). The HSC Trust hired Atty. Robert Elliot to sue the LGS Trust. The clients gave Elliot documents to assist him in preparing their case. When the LGS Trust made a discovery request for materials, Elliot turned over some of the documents that his clients originally had given him.

A new lawyer took over and, in studying the file, determined that some of the documents handed over may have been confidential. HSC Trust had never authorized the disclosure of these papers to LGS Trust. The lawyer asked LGS Trust to return these materials, but they refused. The lawyer took LGS Trust to court to compel them to return the papers. The circuit court appointed a referee to hold a hearing and determine whether the documents were, in fact, protected by the attorney-client privilege. The referee decided they were, but concluded that Elliot had waived the attorney-client privilege by willingly turning them over. The circuit court judge overturned this conclusion, ordering LGS Trust to return the documents.

LGS Trust went to the Court of Appeals, which reversed the circuit court's ruling. The majority noted that an attorney has authority to act on a client's behalf, and the client is bound by the attorney's decisions. The majority noted that Elliot is a well regarded, experienced lawyer who made a conscious decision to turn over these materials. The majority also noted that the documents' confidential nature couldn't be restored by their return; to paraphrase the Court of Appeals majority, the bell cannot be unrung.

In dissent, Judge Ted Wedemeyer said Wisconsin law – established in several past cases[1] -- permits only the client to waive the attorney-client privilege.

HSC Trust now has come to the Supreme Court, which will decide whether they should be allowed to collect the documents that were shared. The Court also is expected to lay out the approach that will be taken in future cases where an attorney turns over privileged documents without the express OK of the client.

[1] State ex rel. Dudek v. Circuit Court, 34 Wis. 2d 559, 150 N.W.2d 387 (1967), and Swan Sales Corp. v. Jos. Schlitz Brewing Co., 126 Wis. 2d 16, 374 N.W.2d 640 (Ct. App. 1985)

WISCONSIN SUPREME COURT
Tuesday, March 9, 2004
10:45 a.m.

03-0662 Cesare Bosco v. Labor & Industry Review Commission, et al

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed an order of the Kenosha County Circuit Court, Judge Bruce E. Schroeder presiding. The circuit court had reversed part of a decision of the Labor and Industry Review Commission.

In this case, the Wisconsin Supreme Court will decide whether an employer may be punished when the employer's insurance company fails to make timely disability payments to an employee.

Here is the background: Cesare Bosco immigrated to the United States from Italy when he was 15 years old. He began working at a Kenosha plant, A.T. Polishing Company, in 1987, polishing stainless steel parts with an electric wheel. In 1993, he saw a doctor for breathing problems. By 1996, he was on full disability as he was physically capable of only deskwork, which, with a fifth grade education, he could not find. He filed an application for disability pay with his employer. Initially, the employer's insurer, Shelby Insurance Company, questioned the nature and extent of Bosco's disability. Then, Shelby disputed the date of his disability. The administrative law judge – a hearing examiner working for the government – ultimately held that Bosco was permanently and totally disabled, and that Shelby must pay his disability.

Shelby, which became Insura Property & Casualty Insurance Company during this case, mounted a court challenge to this decision. The court proceedings lasted through January 2001, when the state Supreme Court refused to take the case. During that time, Shelby did not pay Bosco's benefits.

Because of Shelby's refusal to pay the benefits while the case was in the courts, Bosco sought to have the company fined for negotiating in bad faith. Wisconsin law[2] provides for penalties against employers and insurers who deny benefits when there is no reasonable basis for doing so. The administrative law judge and the Labor and Industry Review Commission (LIRC) found that Shelby had the right to delay payment while the appeal was pending.

Bosco appealed, and the Kenosha County Circuit Court reversed the LIRC, finding that because Shelby's appeal did not challenge the employer's liability to Bosco, A.T. Polishing must pay Bosco while the case was working its way through the courts. Shelby appealed, and the Court of Appeals affirmed the circuit court, writing, "[A]n employer *must* make payment of benefits during judicial review when the only question is who will pay the benefits."

Shelby appealed to the Supreme Court, which, this time, took the case. The Supreme Court will decide whether Shelby acted in bad faith and also whether employers such as A.T. Polishing may be penalized when their insurers do not pay benefits in a timely manner.

[2]Wis. Stats. §102.23(5)

WISCONSIN SUPREME COURT
Tuesday, March 9, 2004
1:30 p.m.

02-3014-CR State v. Bart C. Gruetzmacher

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case began in Waupaca County Circuit Court, Judge Raymond S. Huber presiding.

In this case, the Supreme Court will decide whether, if a trial court that makes a mistake in calculating a sentence may correct the error by reducing the punishment on one count and increasing it on another in order to achieve what the judge originally intended. This question is of special importance right now; the Truth-in-Sentencing system has added to the number of mathematical calculations the court must perform in sentencing.

Here is the background: In November 2001, Bart C. Gruetzmacher was charged with crimes including substantial battery, possession of marijuana, victim intimidation, and bail jumping. He agreed to plead guilty on four counts and, in exchange, the State dropped an additional six charges. The prosecutor also agreed to recommend a maximum of 40 months' initial confinement, although judges are not bound by sentencing recommendations. Because Gruetzmacher committed his crimes in 2001, he was subject to Truth-in-Sentencing penalties.

Judge Raymond S. Huber accepted the plea and sentenced him to 40 months' confinement followed by 20 months of extended supervision on the substantial battery charge. On the other three counts (possession of THC, victim intimidation, and bail jumping), the judge withheld sentence and imposed probation terms of 12, 12, and four years, to run concurrently.

Shortly after sentencing Gruetzmacher, the judge realized that the maximum sentence permitted for substantial battery is 24 months behind bars. The judge vacated the original sentence and held a new sentencing hearing two weeks later, imposing 24 months of initial confinement on the battery charge and 40 months behind bars on the bail jumping charge. Gruetzmacher responded with a motion to vacate the bail-jumping sentence, arguing that it violated his constitutional protection against double jeopardy. The trial court agreed, erasing the bail-jumping imprisonment and leaving Gruetzmacher with a 24-month sentence.

The State appealed, and the Court of Appeals certified this case to the Supreme Court, finding that the trial judge did what he had to do under the current law, as developed in a 1979 Court of Appeals case.[3] The Court of Appeals noted that a number of state and federal courts have, over the last 20 years, permitted this kind of error-correction, and quoted the U.S. Supreme Court, which noted, "[T]he Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner." [4]

The state Supreme Court will decide whether good-faith sentencing errors that are caught promptly may be fixed by shifting the penalties even if that means increasing an already-imposed sentence – or whether this violates a defendant's constitutional rights.

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[3] State v. North, 91 Wis.2d 507, 283 N.W. 2d 457 (1979)
[4] Bozza v. U.S., 330 U.S. 160

WISCONSIN SUPREME COURT
Wednesday, March 10, 2004
9:45 a.m.

02-2793-CR State v. Victor K. Johnson

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a conviction in Milwaukee County Circuit Court, Judge Jeffrey A. Conen presiding.

In this case, the Wisconsin Supreme Court will decide if an individual testifying in court may give an opinion on whether another physically and mentally competent witness is telling the truth.

Here is the background: Victor Kenneth Johnson was charged with committing three armed robberies – one in April 2000 (a Kohl's food store) and two in July 2000 (Blockbuster Video and Home Depot). In each robbery, he shoplifted merchandise and threatened store personnel with a knife when they tried to stop him as he left.

At trial, the prosecutor cross-examined Johnson about the differences between his testimony and that of the witnesses from the three stores. Specifically, the prosecutor asked Johnson whether the State's witnesses were lying or mistaken in their descriptions of his actions during the robberies. Johnson's lawyer did not object to these questions. Johnson was convicted and he appealed, basing the appeal on his attorney's failure to object to the prosecutor's questions during cross-examination. Johnson argued that his lawyer's performance was deficient and that he should be given a new trial.

Johnson based his appeal on case law[5] that indicates that no witness should be permitted to give an opinion about whether another witness is telling the truth. He rejected other case law[6] that says this type of testimony is OK as long as the purpose is to impeach a witness' credibility or highlight inconsistencies in testimony. The Court of Appeals found that the cross-examination in Johnson's case was appropriate, as the prosecutor's objective was not to seek Johnson's opinion on the truthfulness of the other witnesses, but rather to impeach Johnson's credibility.

Now Johnson has come to the Supreme Court, where he renews his argument that case law prohibits questioning any witness about another witness' veracity. The Supreme Court will decide whether this is a so-called "bright-line rule" that is firm and unwavering, or whether there is room for such questioning under certain circumstances.

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[5] State v. Haseltine, 120 Wis. 2d 92, 352 N.W.2d 673 (Ct. App. 1984) and State v. Kuehl, 199 Wis. 2d 143, 545 N.W.2d 840 (Ct. App. 1995)

[6] State v. Jackson, 187 Wis. 2d 431, 523 N.W.2d 126 (Ct. App. 1994)

WISCONSIN SUPREME COURT
Wednesday, March 10, 2004
10:45 a.m.

01-3051 Terry D. Van Lare, et al. v. Vogt, Inc.

This is a certification from the Wisconsin Court of Appeals, District II (headquartered in Waukesha). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case began in Waukesha County Circuit Court, Judge Patrick L. Snyder presiding.

This case focuses on the economic loss doctrine, which says that when people are involved in a business relationship and money is lost, one cannot bring a tort lawsuit against the other to recover the money. Torts are reserved for wrong acts or omissions that result in injuries. Economic losses are remedied instead through enforcement of the terms of the business contract with certain exceptions that have been carved out in the courts.[7] Whether these exceptions include strict responsibility misrepresentation in a real estate contract is the question that the Court will answer in this case.

Strict responsibility misrepresentation occurs when a person gives wrong information about a subject when s/he should have known the correct information, or had the ability to find it out. So, although the person did not intentionally cause harm, s/he is held responsible for harm that resulted because s/he spoke before checking the facts.

Here is the background: Terry D. Van Lare and Norman J. Wachtl decided to buy a piece of land that once was used as a gravel pit. The seller, Vogt, Inc., indicated in the Option to Purchase document that it had *no knowledge* of any of the following:

- Underground storage tanks
- Structural, mechanical, or other defects
- Inadequate mechanical systems
- Inadequate waste disposal systems
- Unsafe well water
- Dangerous or toxic materials

Van Lare bought the property and, several years later, discovered construction debris including asphalt, concrete, fencing materials, PVC pipes, and more had been buried on the site. He sued Vogt to recover the cost of clean up, claiming that Vogt should be held strictly responsible for this misrepresentation. The jury found in favor of Van Lare, but the judge undid the verdict, concluding that the economic loss doctrine barred the claim.

Van Lare went to the Court of Appeals, which, as noted, asked the Supreme Court to take this case directly. The Court of Appeals pointed out that this case would have an impact on real estate transactions around the state.

The Supreme Court will decide whether a buyer who enters into a real estate contract and finds the land to be worth less that s/he thought, may sue the seller for strict responsibility

[7] In 2003, the state Supreme Court handled a similar case, Digicorp v. Ameritech, 2003 WI 54. In a split decision, the Court carved out a narrow exception to the economic loss doctrine for cases where a person is convinced to enter into a contract by means of fraud. Two justices – Chief Justice Shirley Abrahamson and Justice Jon Wilcox – did not participate in that case, and another two – Justices Ann Walsh Bradley and William Bablitch (now retired) – dissented. Justice Diane S. Sykes concurred in part and dissented in part, leaving a 3-person majority that was not completely united.

misrepresentation, or whether, because the loss is purely economic, the lawsuit is prohibited by the economic loss doctrine.

WISCONSIN SUPREME COURT
Wednesday, March 10, 2004
1:30 p.m.

02-1790 Steven H. Hoyme v. Janice S. Brakken

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Waukesha), which affirmed an order of the Marinette County Circuit Court, Judge David G. Miron presiding.

In this case, the Wisconsin Supreme Court will clarify the difference between a lawsuit based upon weak or strained arguments and one that is truly frivolous. A person who brings a frivolous court action may be punished, and forced to pay the other side's court costs and legal fees.

Here is the background: Janice Brakken and her boyfriend, Steven Hoyme, broke off their relationship. Shortly after, in August 2000, Hoyme went to court seeking a restraining order against Brakken. He said that she had been harassing him. Following a hearing before a family court commissioner in Marinette County, Hoyme's request was granted. Brakken was ordered not to contact him in person, through a third person, or in any way at all.

The following morning, attorneys for both Brakken and Hoyme indicated that the two had reached an agreement permitting Brakken to send Hoyme one letter without violating the injunction. Hoyme's attorney prepared the agreement in writing but Brakken then refused to sign it, saying it did not match what she had agreed to. She said that she told her attorney of this concern. Although Brakken did not return the stipulation, Hoyme asked the court to enter an order approving it. The court did so, without receiving any objection from Brakken.

Brakken mailed Hoyme the letter as planned, but then went to the circuit court – without her attorney – seeking to undo the "one letter" agreement because she had not signed it. The court heard testimony from Brakken and her lawyer and determined that (1) she had authorized her attorney to enter into the agreement on her behalf, and so it would stand as written, and (2) her motion was frivolous and she would have to pay Hoyme over $7,000 in attorney fees.

Brakken appealed this decision to the Court of Appeals, which agreed with the circuit court, noting that, "The [circuit] court's opinion demonstrates that it found that no factual or legal basis for Brakken's motions and that she should have known that none existed…. We …conclude that Brakken's appeal is frivolous…."

Brakken now has appealed to the Supreme Court, arguing that the circuit court erred in declaring her action frivolous when Hoyme had not filed a motion asking for this finding. She also has asked the Court to clarify the difference between a court action that might be very weak and one that is frivolous.

WISCONSIN SUPREME COURT
Friday, March 12, 2004
9:45 a.m.

02-1915 Tammy Kolupar v. Wilde Pontiac Cadillac, Inc., et al.

This is a review of a split decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a ruling of the Milwaukee County Circuit Court, Judge Thomas R. Cooper presiding.

This case started 10 years ago. It involves an 18-year-old woman who bought a used car that turned out to be a lemon, and a mountain of litigation that grew out of her purchase. The Supreme Court will decide whether the buyer should have been awarded more than $15,000 to cover her costs and attorney fees.

Here is the background: In spring 1993, when Tammy Kolupar graduated from high school, she purchased a new Pontiac Sunbird from Wilde Pontiac Cadillac in Waukesha. Nine months later, Kolupar went back to the dealership and traded in her 1993 Sunbird, on which she still owed $10,300, for a 1986 Mercedes Benz. Sales Manager Randall Thompson told her the Benz was part of a special "dealership sale" but, in fact, it was Thompson's personal car. He had purchased it approximately six months earlier for $5,700 and he sold it to Kolupar for $8,600. This practice, according the Wisconsin Department of Transportation, is called "curbing" cars.

According to Kolupar, she immediately began to have trouble with the Benz. The odometer was broken, the brakes needed repairs, the vehicle overheated and stalled in traffic, and, within a few months, she said, it stopped running altogether. She sold it for $2,000.

Kolupar hired an attorney who sent Wilde a letter calling the transaction fraudulent and offering to settle the matter for $13,000. The dealership's lawyer did not agree that the dealership was responsible and therefore refused to negotiate. Kolupar sued Thompson and the dealership. The circuit court appointed a special referee to manage the parties' many discovery requests. Wilde's approach to the case, which included asking Kolupar's friends about her alleged past work in a topless bar, was later described by Court of Appeals Judge Ralph Adam Fine as a "scorched-earth Rambo-litigation policy," while Kolupar's approach was described by the circuit court as alleging that Wilde did everything "short of conquering Europe during World War II."

Kolupar eventually agreed to settle her claim against Wilde and Thompson for $6,600 plus her costs, which, by that time, had ballooned to $41,000 worth of attorney fees and $10,600 in court fees. When asked by the judge for his opinion on the appropriate award for these fees, the referee said, "In 30 years in [the] practice of law, as well as 15 years as a circuit court judge myself, I have never seen a $6,000 case grown barnacles the way this one has." He went on to say, "I don't think this case is worth much more than $15,000 in fees. Although I know both sides spent a lot more time than that." The judge agreed, and ordered this amount.

The Court of Appeals upheld this ruling, finding that the trial judge had the authority to order a payment that he considered to be reasonable.

Kolupar now has come to the Supreme Court, which will determine whether this award was fair, or whether, as Fine's dissent argued, it demonstrates that a "rich defendant can frustrate at every turn a poor plaintiff's quest for justice."

WISCONSIN SUPREME COURT
Friday, March 12, 2004
10:45 a.m.

01-1402 State v. William H. Thornton, Jr.

This is a review of a split decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed an order of the Milwaukee County Circuit Court, Judge Clare L. Fiorenza presiding.

This case involves a prisoner who, while acting as his own lawyer in an appeal, failed to raise an issue in a timely manner. The issue could have changed the outcome of his case, and his excuse for not bringing it up sooner was ignorance of the law and a lack of research skills. The lower courts said he should be prohibited, just as a lawyer would be, from presenting the issue. The Wisconsin Supreme Court will decide whether justice is served by this approach.

Here is the background: In summer 1992, a jury found William H. Thornton Jr. guilty of first-degree reckless endangerment, possession of cocaine with intent to deliver, and possession of marijuana, all while armed with a dangerous weapon. He appealed the conviction and the Court of Appeals affirmed it in June 1994. That appeal did not raise any issue related to the penalty enhancer for the possession of a weapon.

Around the same time that the Court of Appeals affirmed Thornton's conviction, the state Supreme Court issued a decision in a case called State v. Peete,[8] in which it held that a penalty enhancer for possession of a weapon could only be imposed if there were a connection between the weapon and the crime. Three years after Peete, the state Supreme Court issued its opinion in a case called State v. Howard[9], which said that the Peete ruling was to apply retroactively.

In April 1998, Thornton again appealed his conviction, acting as his own lawyer, but he did not raise the "possession of a weapon" issue. Four months later, while this appeal was pending, Thornton filed another motion, this time in the circuit court. In this motion, he did challenge the enhanced penalty under Peete/Howard. But the circuit court did not have the ability to hear that motion because of the proceedings in the Court of Appeals.

In March 2001, Thornton tried again. He made a motion in the circuit court to vacate his weapons possession convictions based upon Peete/Howard. This time, however, the circuit court ruled that Thornton was barred from raising this issue because he could have raised it in his April 1998 appeal and did not. The state Supreme Court set this rule in a case called State v. Escalona-Naranjo. [10] The point of the rule is to stop prisoners from filing successive motions, which drag a case out, and encourage them instead to raise all issues in one appeal, which is less costly and leads to a quicker, more final result.

The Court of Appeals affirmed the circuit court's ruling on this motion, noting that "ignorance is not a sufficient excuse" for failing to raise an issue in a timely manner.

Now, Thornton has come to the Supreme Court, which will decide whether he will be allowed to argue for vacating his weapons possession conviction.

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[8] 185 Wis. 2d 4, 517 N.W.2d 149 (1994)
[9] 211 Wis. 2d 269, 564 N.W.2d 753 (1997)
[10] 185 Wis. 2d 168, 517 N.W.2d 157 (1994)

WISCONSIN SUPREME COURT
Friday, March 12, 2004
1:30 p.m.

00-3318 In re Commitment of Joseph Lombard: State v. Joseph A. Lombard

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a judgment of the Dane County Circuit Court, Judge Robert A. DeChambeau presiding.

In this case, the Supreme Court will decide whether a mental health professional, in interviewing an individual who is facing possible commitment as a "sexual predator", must give the person a Miranda[11] warning prior to the interview.

Here is the background: Joseph Lombard committed a series of rapes and attempted rapes against eight women in 1978-80 in the area around the northwest Wisconsin community of Cumberland. He came to the attention of authorities because he had been making obscene phone calls; when questioned about those, he confessed the assaults. Lombard was convicted and sentenced to a total of 40 years in prison.

In 1999, when Lombard was reaching his release date, the State sought to have him committed for mental treatment as a sexually violent offender. Anthony Jurek, a psychologist who evaluates sexually violent offenders for the Department of Corrections, interviewed Lombard, prefacing the interview with the following:

> You have the right not to participate in the examination or to answer any questions posed to you, but this refusal to answer will be used as part of the evaluation.

Lombard participated, making statements that later were used against him in the court proceeding that was held to determine whether he should be committed for treatment. Jurek concluded that Lombard was a sexual sadist who was likely to re-offend, and recommended commitment. Three other mental health experts, testifying for the defense, had concluded that he did not fit the profile of a sexual predator. The jury voted to commit Lombard.

Lombard appealed this decision, alleging that his attorney was ineffective for failing to object to the use of excerpts from his interview with Jurek. He argued that he should have been advised that refusal to answer *could not* be held against him, and that the language Jurek used was akin to not telling a crime suspect of his/her right to remain silent. In support of this argument, he pointed out that the Court of Appeals has recognized that the State may not comment at trial on the fact that an offender chose not to speak to an examining doctor[12].

The circuit court and the Court of Appeals both concluded that Lombard's attorney was not ineffective and that a person being evaluated as a possible sexual predator is not entitled to a Miranda warning. The Supreme Court will determine whether this is correct.

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[11] Miranda v. Arizona, 384 U.S. 436 (1966), is the case in which the U.S. Supreme Court mandated that, before a suspect in a crime investigation is asked any pertinent questions, police must recite a warning that reminds the suspect of his/her constitutional rights and contains key elements: the right to remain silent and the right to an attorney.

[12] State v. Zanelli, 212 Wis. 2d 358, 596 N.W.2d 301 (Ct. App. 1997)

WISCONSIN SUPREME COURT
Wednesday, March 24, 2004
9:45 a.m.

02-2106 In the Interest of Cesar G: State v. Cesar G.

This is a review of a decision of the Wisconsin Court of Appeals, District III (based in Wausau), which affirmed a ruling of the Brown County Circuit Court, Judge Richard J. Dietz presiding.

In this case, the Wisconsin Supreme Court will decide whether children who commit sex crimes must register as sex offenders. If the Court decides that the juvenile-court judge has the authority to decide whether to order registration, then the Court may set out criteria that should guide the lower courts in making these calls.

Here is the background: In September 2001, when Cesar G. was 13 years old, he committed a first-degree sexual assault of a child while aided by others. He was found delinquent and the judge imposed and stayed a sentence at Lincoln Hills School, a locked juvenile correctional facility. This sentence could be activated if Cesar violated any of the judge's orders. Cesar also received 30 days in juvenile detention and was ordered to wear an electronic monitor; pay restitution to the girl's family; attend sexual perpetrator treatment and cultural education classes; and register as a sex offender.

Cesar asked the judge not to make him register as a sex offender (in legal parlance, Cesar asked the judge to stay the order), but the judge determined that the crime was serious enough to warrant registration until Cesar was 27 or 28 years old. The judge also said that he was not sure whether he had the authority not to stay the registration requirement.

Cesar appealed, challenging the circuit court's refusal to stay the sex offender registration. While it did not address the issue directly because of some issues with the way the appeal was filed, the Court of Appeals did find that, in this case, the judge had properly ordered the sex offender registration.

Now, Cesar has come to the Supreme Court, which will clarify whether a juvenile-court judge has the authority to stay the sex-offender registration requirement for a young offender.

WISCONSIN SUPREME COURT
Wednesday, March 24, 2004
10:45 a.m.

03-1817 Derek J. Harder, et al. v. Carol L. Pfitzinger, et al.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which dismissed an appeal that was not filed in a timely manner. The case originated in Waukesha County Circuit Court, Judge Donald J. Hassin presiding.

In this case, the Wisconsin Supreme Court will clarify when the clock begins to run for filing an appeal.

Here is the background: Derek and Jill Harder sued Carol Pfitzinger for allegedly misrepresenting the condition of a house that she sold to them. The Waukesha County Circuit Court granted summary judgment in favor of Pfitzinger, dismissing the Harders' lawsuit. The judge concluded that (1) Pfitzinger had been unaware of the defects in the house, and (2) the Harders had not relied upon Pfitzinger's statements about the house in deciding to make the purchase.

The judge held the hearing on Feb. 19, 2003, and signed the judgment on Feb. 28, 2003. Pfitzinger completed the paperwork (docketed the judgment against the Harders) 53 days later, on April 22, 2003.

Seventy-seven days after the judgment was docketed, on July 8, 2003, the Harders filed a paper indicating that they planned to appeal. Pfitzinger responded with a motion to dismiss the appeal, arguing that the 90-day window for an appeal had already closed. She was counting from Feb. 28, 2003, when the judge signed the order. The Harders, who maintained that the clock had started to run on April 22, 2003, when the order was docketed, argued that their appeal was timely.

The Court of Appeals sided with Pfitzinger, concluding that the appeal needed to be filed within 90 days of the Feb. 28, 2003 judgment. The Court of Appeals pointed out that the key word that starts the clock is "final"; that is, if a judgment or an order is final – if it disposes of the case completely – then the clock begins to run on the time to appeal.

The Harders now have come to the Supreme Court, where they argue that the Court of Appeals ruling creates confusion. The Harders point out that there are two different documents, signed at different times, that could start the clock on an appeal. The first is the Order for Judgment, which is signed by the judge; the second is the Judgment, which is signed and entered by the clerk. The Court of Appeals found that the Order for Judgment starts the appellate clock; the Supreme Court will decide if this is right.

WISCONSIN SUPREME COURT
Wednesday, March 24, 2004
1:30 p.m.

02-3380 State ex rel. Michael J. Thorson v. David H. Schwarz

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed an order of the Eau Claire County Circuit Court, Judge William M. Gabler presiding.

This case involves a question of whether, and how, to compensate a prisoner who was detained for nearly six months past his proper release date.

Here is the background: In November 1991, Michael J. Thorson was convicted of second-degree attempted sexual assault and false imprisonment in Eau Claire County Circuit Court. He was sentenced to 13 years in prison and reached his mandatory release date in April 2000, at which point he was sent to the Wisconsin Resource Center (WRC), a locked mental hospital, to be evaluated as a possible "sexual predator". In September 2000, after Thorson had spent 170 days at the WRC, a jury found that he was not a sexual predator. He was released on parole on Sept. 20, 2000.

About 18 months after his release, Thorson violated parole. He was returned to prison to serve the 10 months remaining on his original sentence. He asked that the nearly six months he had served at the WRC be applied toward this. This request was denied by the administrative law judge who revoked his parole. He then appealed to the Division of Hearings and Appeals, the Eau Claire County Circuit Court, and the Court of Appeals, and lost each time.

Wisconsin law permits people who are found to be sexually violent by a judge to be held indefinitely in the least restrictive setting that will afford them proper treatment. While the effect of this is to confine the defendant beyond his/her original sentence for the criminal act, the confinement is, under the law, a civil commitment for treatment and not a continuation of the punishment for the criminal act. This distinction led the lower courts to determine that they could not credit Thorson's criminal sentence with the time he spent under a civil commitment.

He now has come to the Supreme Court, where he argues that basic fairness requires the sentence credit. He points out that this issue potentially will arise again and again in similar cases involving defendants in his situation. The Supreme Court will decide whether a prisoner detained past his/her release date for evaluation as a sexual predator is entitled to receive credit for that time if s/he lands back in prison.